IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 21895 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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NAGESHWAR VIDYA TRUST - Petitioner(s)

Versus

CENTRAL BANK OF INDIA & 5 - Respondent(s)

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Appearance :

MR HARDIK A DAVE for Petitioner(s) : 1,
DS AFF.NOT FILED (N) for Respondent(s) : 1 - 4, 6,
MR ABHIJIT JOSHI for Respondent(s) : 1,
MRS VD NANAVATI for Respondent(s) : 2,
SINGHI & CO for Respondent(s) : 3,
MR. PRACHCHHAK, ASST. GOVERNMENT PLEADER for Respondent(s) : 4,
MR JAL SOLI UNWALA for Respondent(s) : 5 - 6.

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 27/12/2005

ORAL JUDGMENT

1.Rule. Shri Abhijit Joshi, learned advocate waives service of Rule on behalf of the respondent No.1, Mrs. V.D.Nanavati, learned advocate waives service of Rule

on behalf of the respondent No.2, Shri Sandeep Singhi, learned advocate appearing for Singhi & Company waives service of Rule on behalf of the respondent No.3, Shri Prachchhak, learned AGP waives service of Rule on behalf of the respondent No.4 and Shri Unwala, learned advocate waives service of Rule on behalf of the respondent Nos.5 and 6.

2. By way of this petition under Article 226 of the Constitution of India, the petitioner has prayed for an appropriate writ, direction on order directing the respondents, more particularly, the respondent Nos.1 to 3 to release/ encashment of all the deposits of the petitioner-trust lying with the respondent Banks mentioned in the petition and permit the committee to operate the respective accounts with the respondent Nos.1 to 3-Banks.

3. It appears from the record that the respondent Nos.5 and 6 have approached the Charity Commissioner, Surat, more particularly, the Joint Charity Commissioner, Surat by way of Misc. Application No.36 of 2004 for issuance of certain directions for the administration and management of the petitioner-trust under Section

41(A) of the Bombay Public Trust Act and till the said application is finally heard, decided and disposed of, the Joint Charity Commissioner, Surat has passed an order that the petitioner-trust should appoint the committee for administration of the trust consisting of Principal of the school, respondent Nos.5 and 6 (trustees of the petitioner-trust), three guardians as a committee members selected by the trust and any other two persons selected by the Principal and the aforesaid three guardians. Thus, in all of eight persons (by mistake in the order passed by the Joint Charity Commissioner, Surat dated 30.6.2005 instead of eight persons, seven persons is mentioned). The Joint Charity Commissioner, Surat has also passed an order that out of the aforesaid members of the committee, one person would be appointed by majority as a President and trustee and they would administer the trust by majority decisions inclusive of the management and administration of the Bank accounts. It appears that as the committee was not constituted as per the order passed by the Joint Charity Commissioner, Surat dated 30.6.2005, the respondent Nos.1 to 3 refused to allow the petitioner-trust to operate the Bank accounts. Now, Shri D.D.Vyas, learned senior advocate appearing on

behalf of the petitioner has submitted that now the committee is already constituted as per the order passed by the Joint Charity Commissioner, Surat dated 30.6.2005 and the trust would be producing the said certified resolution to the respondents Nos.1 to 3. On furnishing the said certified resolution passed in consonance with the order passed by the Joint Charity Commissioner, Surat dated 30.6.2005 and on completing the required formalities, which is required for the purpose of operation of the bank accounts of the trust, the respondent Nos.1 to 3 are directed to allow the petitioner-trust to operate the bank accounts. However, it is directed that the petitioner-trust and the existing committee which is constituted pursuant to the order passed by the Joint Charity Commissioner, Surat dated 30.6.2005 would be permitted to incur expenses for day to-day expenses and run the administration of the school and management and no fixed deposits would be permitted to be prematurely encashed. If there is any further difficulty and/or the necessity arises. It will be open for the trust to approach the Joint Charity Commissioner by way of suitable application. Considering the facts and circumstances of the case, the Joint Charity Commissioner is directed to finalize

the proceedings on an application and pass an appropriate order in accordance with law and on merits as early as possible preferably on or before 28th February, 2006 and pass the final order on the said application after giving an opportunity to all the concerned parties.

4.With these observations and direction, the present Special Civil Application is disposed of. Rule is discharged. However, there will be no order as to costs.

Direct Service is permitted.

(M.R.SHAH, J.)

kdc.